

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Jose Pareja, individually and on behalf of all
others similarly situated,

Plaintiff,

-against-

184 Food Corp. et al.,

Defendants.

USDC SDNY
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DATE FILED: 7/1/2021

1:18-cv-05887 (SDA)

ORDER

STEWART D. AARON, United States Magistrate Judge:

Having reviewed Plaintiff's proposed damages, it is hereby Ordered that, no later than July 15, 2021, Plaintiff shall file supplemental briefing regarding the basis for his damages calculations, including addressing the following:

1. In calculating the "regular rate" under the New York Labor Law, Plaintiff cites to the regulations applicable to hospitality workers, which do not appear to apply to Plaintiff. (See Faillace Decl. ¶ 70.) Plaintiff shall either submit a revised calculation of damages and/or supplement his briefing as to the legal basis supporting his current calculation of the regular rate.¹ Compare 12 N.Y.C.R.R. § 146-3.5 (stating that "regular rate of pay" for employees in the hospitality industry is calculated by dividing the employees' weekly earnings by the lesser of 40 hours or the actual number of hours worked by that employee during the work week), with 12 N.Y.C.R.R. §§ 141-3.3, 142-2.16 (stating

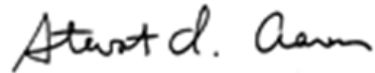
¹ The Court further notes that Plaintiff's explanation for his calculation of the regular rate (see Faillace Decl. ¶ 60) is inconsistent with the calculation in his statement of damages, in that he does not calculate the regular rate based on the number of hours worked per week, but rather based on a total of 40 hours per week.

that “regular rate of pay” for employees outside of hospitality industry is calculated by dividing the employee’s weekly earnings by the actual number of hours worked by that employee during the work week).

2. If, based on paragraph 1, Plaintiff continues to assert that a regular rate above the minimum wage applies, he shall address the basis for his minimum wage claims and the legal basis for any entitlement to spread of hours damages. Otherwise, as set forth above, he shall submit a revised statement of damages.

SO ORDERED.

DATED: New York, New York
July 1, 2021

A handwritten signature in cursive script, reading "Stewart D. Aaron", is written in black ink on a white background.

STEWART D. AARON
United States Magistrate Judge